

**§ 10.109 Claims for balance of schedule awards unpaid at death when death is due to other causes.**

(a) If an employee who has sustained compensable impairment within the meaning of 5 U.S.C. 8107, and has filed a valid claim during his or her lifetime, dies from causes other than the injury which resulted in the compensable impairment before the entire amount due for the schedule was paid, a claim for the unpaid balance may be made on a form approved by the Office by the surviving spouse or child in accordance with 5 U.S.C. 8109(a)(3)(D). If there is no surviving spouse or child, then a claim for the unpaid balance may be made by any other survivors pursuant to 5 U.S.C. 8109(a)(3)(D) and benefits shall be paid in the proportions and under the conditions and in the order as follows:

(1) To the parent or parents wholly dependent for support upon the decedent in equal shares with any wholly dependent brother, sister, grandparent or grandchild;

(2) To the parent or parents partially dependent for support upon the decedent in equal shares when there are no wholly dependent brothers, sisters, grandparents or grandchildren (or other wholly dependent parent); and

(3) To the parent or parents partially dependent upon the decedent, 25 percent of the amount payable, shared equally, and the remaining 75 percent to any wholly dependent brother, sister, grandparent or grandchild (or wholly dependent parent), share and share alike.

(b) Any survivor referred to in paragraph (a) of this section must be alive to receive any payment and any such survivor shall not have a vested right to any such payment. Claims for continuation of payments under 5 U.S.C. 8109 shall be made in the manner described by § 10.126 of this subpart.

(c) The entitlement of any survivor to payment under 5 U.S.C. 8109 shall cease upon the happening of any event which would terminate such right under 5 U.S.C. 8133. The termination of such right and any necessary reapportionment shall be governed by § 10.128 of this subpart.

(d) The disposition of any balance not paid under the foregoing paragraphs

shall be made in accordance with 5 U.S.C. 8109(a)(D)(v).

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EVIDENCE

**§ 10.110 Burden of proof.**

(a) A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the claimed condition and the disability, if any, was caused, aggravated, or adversely affected by the claimant's Federal employment. As a part of this burden, the claimant must specify the employment incident or the factors or conditions of employment to which the injury, disease or disability is attributed, and must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing causal relationship between the claimed condition and the Federal employment. The fact that a condition or disease manifests itself during a period of Federal employment by itself does not raise an inference that there is causal relationship between the two. Neither the fact that the condition or disease became manifest during a period of Federal employment, nor the belief of the claimant that the condition or disease was caused or aggravated by employment conditions or factors, is sufficient in itself to establish causal relationship.

(b) If a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. Subsequent submissions of evidence still not sufficient to carry the burden of proof will not require another notification of defects. The Office may, in its discretion, undertake to develop either factual or medical evidence for determination of the claim. For example, when the claim is based on exposure to hazardous material or noise at work, or when relevant evidence is in the possession of the Federal government and not accessible to the claimant (e.g., a deactivated employing agency facility), the Office will